IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.30/2002

Reserved on. 27.4.2007

Decided on-1.6.2007

Chhanga Ram **…Petitioner.**

Versus

Municipal Council, Dalhousie & another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]. No

For the petitioner : **Mr. Anand Sharma, Advocate**

For the respondent No.1 **Mr. Sandeep Kaushik, Advocate**

Rajiv Sharma, J.

This petition is directed against the judgment of the learned District Judge, Chamba, District Chamba, H.P. dated 20.10.2001.

The brief facts necessary for the adjudication of this petition are that the respondent-Council had received complaints from its Engineering and Sanitation sections to the effect that the petitioner had constructed a four storeyed building without getting prior permission from the Municipal Council. Consequently, a notice under section 211 (1) (a) of the Municipal Act, 1994 was delivered to the petitioner to remove the unauthorized construction. The petitioner had admitted vide letter dated 13.11.2000 that he had raised the construction but submitted that it was not unauthorized as he only demolished the old building and thereafter raised the new construction. Consequently the matter was placed before the House of the Municipal Council which vide resolution No. 167 (8) dated

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

27.6.2007 unanimously resolved to demolish the unauthorized construction raised by the petitioner. Ultimately order dated 9th July, 2001 was issued by the Executive Officer of the Municipal Council, Dalhousie. Feeling aggrieved by the order dated 9.7.2001, he filed an appeal under section 212 (1) of the Municipal Act, 1994 before the learned District Judge, Chamba on 13.7.2001. The learned District Judge has dismissed the appeal on 20.10.2001.

Mr. Anand Sharma, Advocate appearing on behalf of the petitioner had argued strenuously that the order passed by the Executive Officer dated 9th July, 2001 is not in conformity with law and the learned District Judge has failed to take into consideration the provisions of H.P. Municipal Act, 1994 while dismissing the appeal.

Mr. Sandeep Kaushik, Advocate appearing on behalf of respondent-Council has supported the orders passed by the competent authorities.

I have heard the parties and perused the record.

The petitioner was served with a notice on 24.10.2000 and he admitted that he had raised the construction. The case set out by the petitioner before the Council was that he has demolished the earlier structure and raised the new construction. The petitioner was required to get the building plan approved from the Municipal Council before raising any construction. The submission of the petitioner before the Council that he was not aware that permission is required for raising new construction after the demolition of old structure is un-tenable. The petitioner had raised a four storeyed building and the old structure was only having one storey. Once the petitioner had admitted as per Annexure R-1/5 dated 13.11.2000 that he has raised the construction without the permission, resolution passed by the Council cannot be faulted with. The learned

District Judge has extensively dealt with the contention raised by the petitioner but on the basis of the material placed on record repelled the same.

The second contention raised by the petitioner towards the end of the submissions was that he was discriminated against by the respondent-council as in the recent past many constructions have come up and no action whatsoever has been taken by the respondent to check the unauthorized construction. Mr. Sandeep Kaushik has refuted the submission made by the counsel for the petitioner and has submitted that the matters of those persons have been compounded strictly in accordance with law and in majority of the cases, the deviation was within the permissible limits.

The learned District Judge has examined the record and the findings recorded by him will not be interfered with by this Court while exercising the jurisdiction under Article 226/227 of the Constitution of India.

The Hon'ble Supreme Court in ***M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu*** (1999*) 6* SCC 464 has held that the Court should order demolition of such construction even though builder has invested considerable amount. Their Lordships of the Hon'ble Supreme Court have opined as under:

> **"No consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice**

is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

The upshot of the above discussion is that the petitioner had raised unauthorized construction without seeking prior permission of the Municipal Council as per the provisions of the H.P. Municipal Act, 1994 and the Building Bye-Laws framed thereunder.

Accordingly the writ petition is dismissed with no order as to costs and the interim order dated 7.1.2002 is vacated

(Rajiv Sharma), Judge

June 1, 2007
Awasthi